

A MAYBAN SECURITIES SDN BHD

v.

POH GAIK LYE

B HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[CIVIL SUIT NO: D8-22-1396-2003]
3 JULY 2007

C **CIVIL PROCEDURE:** *Judgment - Setting aside - Application for abridgement of time - Judgment entered based on defendant's failure to attend case management - Whether chronology of events showed defendant delayed case - Whether case should be heard on merits since it involved a large sum of money - Rules of the High Court 1980, O. 34 rr. 3, 7*

D The defendant applied for abridgement of time to set aside a judgment obtained against her. The judgment was entered against the defendant upon her failure to attend the case management on a specific date after a series of case managements had been held.
E The defendant claimed that the case should be heard on merits since it involved a claim of RM8 million.

Held (dismissing the application):

F (1) From the facts of the case, it was clear that the defendant was disinterested to have the claim against her decided on merits in a court of law. It was clear from the undisputed chronology of events that the defendant had embarked on a course of events to delay the progress of the case and to prevent the plaintiff from seeking an early hearing of its claim against her. (paras 7 & 8)
G

H (2) A litigant desiring to defend his case in court must assiduously comply with the rules of court so that the dispute can be litigated. Order 34 of the Rules of the High Court 1980 ('RHC') provides for a case management procedure to bring about an expeditious hearing of a suit. A party who obstructs the process will have to suffer the consequence of having judgment entered against him under O. 34 r. 3 and r. 7 RHC. The fact that the present case involved a large claim and had not been heard on its merits was not a good ground to set aside the judgment since the defendant clearly impeded the very system designed to facilitate the disposal of the case. (para 9)
I

Case(s) referred to:

Fira Development Sdn Bhd v. Goldwin Sdn Bhd [1989] 1 CLJ 1; [1989] 1 CLJ (Rep) 32 SC

Legislation referred to:

Rules of the High Court 1980, O. 34 rr. 3, 7, O. 35

For the plaintiff - Ramesh Sanghvi; M/s Kassim Tadin, Wai & Co

For the defendant - Sharen Ram; M/s Mohd Fuad Ram Yogan

Reported by Usha Thiagarajah

JUDGMENT

Kang Hwee Gee J:**This Is My Oral Judgment (*ex-tempore*)**

[1] This is an application by the defendant for abridgement of time to file the summons in chambers and the affidavit to set aside a judgment that was obtained against the defendant on 6 October 2006 and to set aside the judgment.

[2] The judgment was entered against the defendant on the ground on account of her failure to attend case management on 6 October 2006. She claimed that at that time she was unrepresented and was labouring under the impression that the firm of Zain Megat & Murad had been representing her. The said firm had been retained by her to defend her in this suit on 19 December 2005. The said firm then obtained an order from the court to discharge itself from further acting for her on 23 June 2006. The defendant claimed that she had not received any court order informing her of the discharge in requiring her to attend the case management on 6 October 2006. She was only aware of the judgment been entered against her after receiving a copy of the plaintiff's letter enclosing judgment in early December 2006 when she came back from overseas. She consulted her new solicitors Mohd Fuad Ram Yogan who conducted a search on the progress of the case on 22 December 2006 and was able to trace the events that led to the grant of the judgment against her.

[3] The defendant contends that the matter had not been heard on the merit, the defendant having filed her defence earlier. See *Fira Development Sdn Bhd v. Goldwin Sdn Bhd* [1989] 1 MLJ 40 Supreme Court decision at Held:

- A (2) Where judgment is entered on the failure of a defendant to take any of the procedural steps laid down under the Rules of the High Court 1980, the court has an absolute discretion to set aside the judgment on terms and allow the case to be heard on the merits.
- B (3) As to delay there is no rigid rule that an applicant must satisfy the court that there is a reasonable explanation only when judgment was allowed to go by default. Obviously the reason, if any, for allowing the judgment and thereafter applying to set it aside is one of the matters to which the court will have regard in exercising its discretion.
- C (4) The application should clearly be made promptly and within a reasonable time. But the court will in a fit case disregard lapse of time.

D Also at 41:

A defence on the merits means merely raising only an arguable or triable issue, eg, contributory negligence in a running down case in *White v. Weston* [1968] 2 QB 647 (refd). A judgment in default is not a judgment on the merits: *L Oppenheim & Co v. Mahomed Haneef* [1922] 1 AC 482 (refd).

E [4] *The Application Is Opposed By The Plaintiff On The Following Grounds: (Verbatim)*

- F 1. Being unaware of the case management is being rebutted by the plaintiff in its 1st affidavit in that a letter had been sent to the defendant dated 11 September 2006 notifying the defendant that she is required to attend court on 6 October 2006. This letter was sent by registered post to the same address as the present address of the defendant.
- G 2. The defendant's former solicitors Tetuan Zain Megat & Murad had by their letters dated 14 August 2006 and 29 August 2006 which were sent by registered post served on the defendant a copy of the sealed order for discharge dated 23 June 2006 and in the same letters the defendant had been informed that she was required to attend case management on 8 September 2006 and if she failed to attend judgment would be entered against her.

I

3. In all there were 16 case managements being conducted. There were two sets of solicitors prior to the present solicitors who had represented the defendant and had discharged themselves. **A**
4. The chronology of events on the course of the case management is set up in the 1st affidavit of the plaintiff exh. "SB2" pp 3-8 as follows: **B**

**Case Management
Chronology Of Events**

Date	Outcome	C
1. 30/8/2004 (1st Case Management)	Date vacated by Court. New Date 7/10/2004 pending disposal of Defendant's SDK for preservation of shares under O. 29 r. 2 RHC 1980 (for Hearing 7/10/ 2004).	D
2. 7/10/2004	Hearing of Defendant's SDK adjourned by Court to 5/11/2004 as Court had part heard full trial.	E
3. 5/11/2004	Hearing of Defendant's SDK. Court dismissed Defendant's SDK under O. 29 r. 2 and set aside Order of 4/8/2004 obtained by Defendant restraining Plaintiff from selling shares. Case Management on 14/2/2005.	F G
4. 14/2/2005 (2nd Case Management)	Defendant's Solicitors not present. Court adjourned case management to 15/4/2005.	H I

- A** 5. 15/4/2005
(3rd Case Management)
- B**
- C**
- D** 6. 16/6/2005
(4th Case Management)
- E**
- F**
- G** 7. 15/7/2005
(5th Case Management)
- H**
- I** 8. 16/9/2005
(6th Case Management)
- Adjourned by Court at request of Defendant's Solicitors to enable Solicitors to sort out with their client issue of documents for the purpose of the Agreed/Non-Agreed Bundles.
- Plaintiff's Solicitors letter of 7/2/2005 had forwarded to Defendant's Solicitors the documents to be incorporated. Case Management adjourned to 16/6/2005.
- Plaintiff proceeded to file Ikatan Dokumen Plaintiff as Defendant's Solicitors had not responded. Defendant's Solicitors requested a new date for Defendant to file Ikatan Dokumen Defendant after obtaining certain documents from KLSE.
- Case Management adjourned to 15/7/2005.
- Defendant's Solicitors informed Court that Defendant had no documents to be filed. Court adjourned case management to 16/9/2005 for parties to file Statement of Agreed Facts and Issues for Determination.
- Defendant's solicitors informed Court that Defendant needs more time to sort out the Issues. Court adjourned Case Management to 6/10/2005.

9.	6/10/2005 (7th Case Management)	Defendant's solicitors informed Court that they had filed SDK to be discharged as Solicitors. Court granted order in terms and directed Defendant's counsel to serve sealed Order for discharge as Solicitors on Defendant. Court adjourned case management to 23/11/2005.	A
10.	23/11/2005 (8th Case Management)	Defendant's counsel informed Court that the sealed order for Discharge as Solicitors had not extracted and therefore not served on Defendant. Court adjourned case management to 19/12/2005.	B
11.	19/12/2005 (9th Case Management)	Defendant appointed new firm of Solicitors (Tetuan Zain Megat & Murad) and the Solicitors requested a new date as they had just been retained by Defendant. Court adjourned case management to 20/2/2006.	C
12.	20/2/2006 (10th Case Management)	Defendant's Solicitors informed Court that they had not been able to obtain the documents/cause papers from Defendant's former Solicitors and therefore requested a new date. Court adjourned case management to 21/4/2006.	D

- | | | |
|----------|---|---|
| A | 13. 21/4/2006
(11th Case Management) | Judge on leave. Court adjourned matter to 23/5/2006. |
| B | 14. 23/5/2006
(12th Case Management) | Defendant's counsel not in Court. Court adjourned case management to 23/6/2006. |
| C | 15. 23/6/2006
(13th Case Management) | Defendant's counsel informed Court that a SDK had been filed on 23/6/2006 to be discharged as |
| D | | Solicitors. Court granted Order in terms and directed Defendant's counsel to serve copy of the sealed order on Defendant and to inform Defendant of the new date. |
| E | | Court adjourned case management to 7/8/2006. |
| | 16. 7/8/2006
(14th Case Management) | |
| F | | Court was informed by Defendant's Solicitors that the sealed Order not extracted and therefore not served on Defendant. Court adjourned case management date to 8/9/2006. |
| G | | |
| | 17. 8/9/2006
(15th Case Management) | Judge on leave. Court adjourned matter to 6/10/2006. |
| H | | |
| | 18. 6/10/2006
(16th Case Management) | Defendant absent. Judgment entered against Defendant after Court was satisfied that Tetuan Zain Megat & Murad had served |
| I | | |

on Defendant sealed order
for discharge as Solicitors
by way of their letter sent
by A.R. registered post and
the Affidavit of Service filed
in Court (Enc 32).
(Plaintiff's Solicitor had also
notified Defendant of the
case management date of 6/
10/2006 by way of Plaintiff's
Solicitors letter dated 11/9/
2006 sent by registered
post).

A

B

C

[5] Between 30 August 2004 to 6 October 2005 there were 7 case managements. The defendant's 1st solicitor Tetuan T.K. Wong, Tan & Associates had the case management adjourned on 7 occasions on the following grounds:

D

a) 14 February 2005 – T.K. Wong, Tan & Associates did not show up in court.

b) 15 April 2005 – T.K. Wong solicitor attended court and requested adjournment as they needed time to sort out with their client on the issue of documents.

E

c) 16 June 2005 – T.K. Wong informed the court that they needed time to file Ikatan Dokumen Defendan after obtaining certain documents from KLSE.

F

d) 15 July 2005 – T.K. Wong informed the court that the defendant had no documents to be filed.

e) 16 September 2005 – T.K. Wong informed court that the defendant needed more time to sort out the issues of agreed facts and issues for determination.

G

f) 6 October 2005 – At this time T.K. Wong informed the court that they had filed an application to discharge themselves as solicitors on the ground that the defendant did not agree with them on the steps to be taken for the full trial.

H

5. The 2nd solicitor Tetuan Zain Megat & Murad was appointed on 19 December 1995 and 5 case management dates were adjourned for the following reasons:

I

- A a) 19 December 2005 – solicitors informed the court that they had just been appointed and therefore needed time.
- b) 20 February 2006 – solicitors informed the court that they were unable to obtain documents and cause papers from the defendant’s former solicitors.
- B c) 23 May 2006 – defendant’s solicitor was not present in court.
- d) 23 June 2006 – defendant’s solicitor informed the court that they filed an application to discharge themselves on the ground that the defendant had failed to give them proper instruction or provide any documents in spite of their four letters dated 28 February 2006, 9 March 2006, 4 May 2006 and 26 May 2006.
- C
- D

Reply By Counsel For The Defendant

[6] Matters had not been heard on merit – matters concerned claim of RM8 million.

E **Findings And Decision**

[7] It is clear to me that the defendant was disinterested to have the claim against her decided on the merit in a court of law.

F [8] It is clear from the undisputed chronology of events set forth in the affidavit of plaintiff that the defendant had embarked on a course of events to delay the progress of the case and to prevent the plaintiff from seeking an early hearing of its claim against her.

G [9] A litigant desiring to defend his case in court must assiduously comply with the rules of court so that the dispute can be litigated. Order 34 of the Rules of the High Court 1980 provides for case management procedure to bring about an expeditious hearing of a suit. A party who obstructs the process as the defendant had in my view did in this case will have to suffer the consequence of having judgment entered against him under O. 34 r. 3 and r. 7 of the RHC. The fact that the case involved a large claim had not been heard on the merit does not provide a good ground to set aside a judgment entered on

H

I

account of her failure to comply with the requirement of O. 35 if the fact clearly indicates that she was impeding the very system designed to facilitate the disposal of the suit in which she is a defendant. A

[10] The application is dismissed with costs. B

C

D

E

F

G

H

I